

AG Contract No. KR02-1761TRN  
ADOT ECS File: JPA 02-103  
Project: G 1051 11C  
Section: Economic Strength Program (ESP)  
Grant: Reconstruct  
(.19 miles of US 60 at North 37<sup>th</sup> Street)

## INTERGOVERNMENTAL AGREEMENT

BETWEEN  
THE STATE OF ARIZONA  
AND  
THE CITY OF SHOW LOW

THIS AGREEMENT is entered into 12 December 2002, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the CITY OF SHOW LOW, acting by and through its CITY COUNCIL (the "City").

### I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-401 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.

2. The City is empowered by Arizona Revised Statutes Section 11-201 and 28-7282 et seq. to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the City.

3. The City has requested Economic Strength Project (ESP) funds in the amount of \$56,093.00; and the Commerce and Economic Development Commission have recommended the approval of such funds for the City, and the Transportation Board has approved the funding, for the reconstruction of improvements to .19 miles of US 60 at North 37<sup>th</sup> Street to provide improved access, and aid in the retention and development of local business, hereinafter referred to as the Project.

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

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NO. 25679  
Filed with the Secretary of State  
Date Filed: 12/12/02  
Betty Bayless  
Secretary of State

By: V. V. Haenewald

## **II. SCOPE OF WORK**

### **1. The City will:**

a. Insure the additional commitment of 58.67% of the total estimated Project cost, or \$79,623.00, whichever is more, from the City or other sources (not including ESP funds) to the Project. Accomplish construction of the Project by public bidding, in strict compliance with State procurement laws, rules and regulations. Upon completion, approve and accept the Project on behalf of the City and provide maintenance.

b. No more often than monthly, invoice the State for ESP funds (Arizona Department of Commerce, ATTN: ESP Program Director, 3800 N. Central Avenue, Suite 1500, Phoenix, AZ 85012), in an amount not to exceed \$56,093.00.

c. Provide the State a copy of the executed Project contract(s), and draw down and expend the State ESP funds no later than twelve (12) months after the effective date of this agreement. Provide the State detailed written reports of all ESP fund expenditures, supported by invoices, receipts or other suitable and appropriate documentation, and a final accounting report no later than thirty (30) days after ESP funds are fully expended.

d. Reimburse the State any funds received from the State under this agreement, which are not specifically and directly expended in compliance with the ESP grant application, which is attached hereto and made a part hereof, and are subsequently disallowed by the State.

e. Provide the State (Arizona Department of Commerce, ATTN: ESP Program Director, 3800 N. Central Avenue, Suite 1500, Phoenix, AZ 85012) with quarterly Project status reports, and one year after completion of the Project, a written Economic Impact Report detailing the direct and indirect impact of the Project, to include jobs created, jobs retained and related data.

### **2. The State will:**

Within thirty (30) days after receipt and approval of the ESP contract(s) and subsequent monthly progress payment invoices, reimburse the City for work completed on the Project funds in an amount not to exceed \$56,093.00.

## **III. MISCELLANEOUS PROVISIONS**

1. The only interest of the Department of Transportation in the Project is to convey economic strength pass through funds for the use and benefit of the City by reason of state law under which funds for the Project are authorized to be expended.

2. The City agrees to indemnify and save harmless the State, or any of its departments, agencies, officers or employees, from and against all loss, expense, damage or claim of any nature whatsoever which is caused by any activity, condition or event arising out of the performance by the State of any of the provisions of this agreement. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation and attorneys fees.

3. The total amount of ESP funds expended under this agreement shall not exceed 41.33% of the total Project cost. Should the Project not be completed, be partially completed, or be completed at a lower cost than the advanced amount, or for any other reason should any of these ESP funds not be expended, a proportionate amount of the funds provided under this agreement shall be reimbursed to the State.

4. This agreement shall remain in force and effect until completion of said Project, reimbursement and subsequent reports; provided, however, that this agreement, except any provisions herein for maintenance, which shall be perpetual, unless assumed by another governmental agency, may be cancelled at any time prior to the award of a construction contract, upon thirty (30) days written notice to the other party. Further, this agreement may be terminated and the ESP grant cancelled by the State if the City, in the opinion of and by action of the Transportation Board, fails to pursue due diligence on the Project or in the performance of any of the terms of this agreement.

5. This agreement shall become effective upon filing with the Secretary of State.

6. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511 as regards conflicts of interest on behalf of State employees.

7. The provisions of Arizona Revised Statutes Section 35-214 pertaining to 5-year records retention by the City and audit by the State are applicable to this contract.

8. In the event of any controversy which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth in Arizona Revised Statutes Section 12-1518.

9. All notices or demands upon any party to this agreement, except as otherwise specified herein, shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation  
Joint Project Administration  
205 South 17 Avenue, Mail Drop 616E  
Phoenix, AZ 85007  
FAX (602) 712-7424

City of Show Low  
City Manager  
200 W. Cooley  
Show Low, AZ 85901  
FAX (928) 532-4009


10. Attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

**CITY OF SHOW LOW**

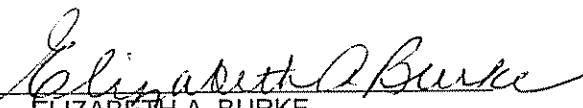
**STATE OF ARIZONA**

Department of Transportation

By   
\_\_\_\_\_  
GENE KELLEY  
Mayor

By   
\_\_\_\_\_  
DALE BUSKIRK, Acting Division Director  
Transportation Planning Division

ATTEST:

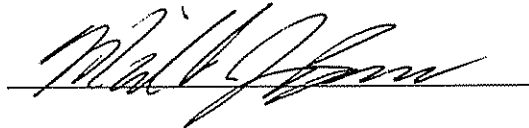
By   
\_\_\_\_\_  
ELIZABETH A. BURKE  
City Clerk

JPA 02-103

APPROVAL OF THE CITY OF SHOW LOW ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the CITY OF SHOW LOW and declare this agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2002.

A handwritten signature in black ink, appearing to read "Matt Jones", is written over a horizontal line.

Attorney



JANET NAPOLITANO  
ATTORNEY GENERAL

STATE OF ARIZONA  
OFFICE OF THE ATTORNEY GENERAL  
TRANSPORTATION SECTION  
1275 WEST WASHINGTON STREET, PHOENIX, AZ 85007-2926

TRN Main: (602) 542-1680  
Direct: (602) 542-8855  
Fax: (602) 542-3646

MAIN PHONE : (602) 542-1680  
FACSIMILE : (602) 542-3646

## **INTERGOVERNMENTAL AGREEMENT** **DETERMINATION**

A.G. Contract No. KR02-1761 TRN (JPA 02-103), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED December 4, 2002.

JANET NAPOLITANO  
Attorney General

SUSAN E. DAVIS  
Assistant Attorney General  
Transportation Section

/srs

Att.